IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Crl.Rev.Pet.No. 501 of 1999(C)

CRA.26/1994 of ADDL.SESSIONS COURT, KOTTAYAM
CC.54/1991 of JUDL. MAGISTRATE OF FIRST CLASS, CHANGANACHERRY

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REVN. PETITIONER: APPELLANT/ACCUSED

SURESH, S/O.PATHROSE
KOCHUPARAMBIL HOUSE
CHINGAVANOM KARA
NATTAKAM VILLAGE.

BY ADV. SRI.TOMY SEBASTIAN
SRI.K.P.THANKACHAN
SMT.CHANDINI G.NAIR

RESPONDENTS: COMPLAINANT & STATE

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.501 of 1999

Dated this the 22nd day of October, 2007

O R D E R

The revision petitioner is the first accused in C.C.No.54/91 in the court of Judicial First Class Magistrate, Changanacherry with respect to the offences under Sections 457, 380 and 461 read with Section 34 IPC and stands convicted and sentenced to undergo R.I. for two years for the offence under Section 457 IPC and R.I. for one year for the offence under Section 380 IPC on the allegation that he along with the second accused on 17.6.1990 at about 2 a.m. in the night broke open the door of the house of the defacto complainant and committed theft of a gold ring and a V.C.P. The case of the co-accused was disposed of by this court confirming the conviction but modifying the sentence. The sentence as modified for the offence under Section 457 IPC is to undergo R.I. for one year and for the offence under Section 380 IPC is reduced to R.I. for six months.

2. The counsel for the revision petitioner has only sought for modification of the sentence in terms of the judgment in

Crl.R.P.No.483/99 in the revision filed by the second accused. He has also sought for applying Section 427 Crl.P.C. It is pointed out that he was arrested on 31.1.1991 and 5 cases were registered against him and false recoveries were made and charge sheets filed in C.C.No.50/91 with respect to the offences under Sections 457 and 380 read with Section 34 IPC and in other cases. He stands convicted and sentenced to undergo R.I. for six months as modified by this court in view of the fact that 16 years have elapsed since the date of the commencement of the proceedings. In C.C.No.52/91 also for the offence under Section 379 IPC he stands convicted and sentenced to undergo R.I. for a period of one year and the appeal and the revision petition is dismissed. In C.C.No.53/91 and stands convicted and sentenced to undergo R.I. for a period of one year with respect to the offence under Section 457 IPC and R.I. for six months for the offence under Section 379 IPC with direction that the sentences shall run concurrently. In C.C.No.55/91 the accused/ petitioner was convicted by the courts below and in revision this court acquitted the accused/petitioner. It is submitted that he has undergone pretrial detention for a period from 26.10.1990 to

15.3.1991. Further from 16.7.2007 he is undergoing imprisonment. He has sought for direction to have the sentences in the above cases along with the sentence sought to be revised in the present case to run concurrently.

3. In the circumstances, I find that the plea of the revision petitioner to have the sentence reduced to R.I. for six months for the offence under Section 457 IPC and 380 IPC is to be allowed as the sentence imposed on the co-accused has been reduced to six months each as per the order of this court in Crl.R.P.No.483/99. In the circumstances, the sentence imposed on the accused herewith is modified to R.I. for six months each for the offences under Sections 457 and 380 IPC. The same shall run concurrently.

4. The Division Bench of this court in **Subrahmanian vs. State of Kerala (1983(KLT452)**) has examined in detail the circumstances in which Section 427 can be invoked and invoked the same in a similar situation wherein the petitioner therein was sentenced for the offence under Sections 457 and 379 read with Section 34 IPC. I find that it is not necessary to examine the above aspects in detail as the case of the petitioner herein is

similar to that of the petitioner in Subrahmanian's case (op. cit.). Hence, it is hereby ordered that the sentences imposed on the petitioner in C.C.Nos. 50/91, 52/91, 53/91 and in the instant case i.e., C.C.No.54/91 shall be undergone concurrently. He will also be entitled for set off.

The criminal revision petition is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl